



Düsseldorf Local Division
UPC_CFI_1034/2025
UPC_CFI_931/2026

Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 2 September 2026
concerning EP 3 909 047

CLAIMANT:

Yangtze Memory Technologies Co., Ltd., No.88 Weilai 3rd Road, East Lake High-tech Development Zone, Wuhan, Hubei 430000, China

represented by: Attorney-at-law Oliver Jan Jüngst, Attorney-at-law Lucas Brons, Bird & Bird LLP, Carl-Theodor-Straße 6, 40213 Düsseldorf, Germany

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participating: Patent Attorney Dr. Felix Landry, Patent Attorney Leonard Lotz, Bird & Bird LLP, Am Sandtorkai 50, 20457 Hamburg, Germany

DEFENDANTS:

1. **Micron Technology, Inc.**, 8000 South Federal Way Boise, Idaho 83707-0006, USA
2. **Micron Europe Ltd.**, Venture House 2 Arlington Square, Downshire Way, Bracknell, Berkshire, RG12 1WA, United Kingdom
3. **Micron Semiconductor (Deutschland) GmbH**, Leopoldstrasse 250 B, 80807 Munich, Germany
4. **Micron Semiconductor France SAS**, Immeuble Iliade, 23 Avenue Carnot, 91300 Massy, France

represented by: Attorney-at-law Prof Dr Tilman Müller-Stoy, Attorney-at-law Dr Jan Bösing, Patent Attorney Tobias Kaufmann, Patent Attorney Dr Christian Haupt, Bardehle Pagenberg, Prinzregentenplatz 7, 81675 Munich, Germany

PATENT IN SUIT:

European Patent n° 3 909 047

PANEL/DIVISION:

Panel 1 of the Local Division in Düsseldorf

DECIDING JUDGES:

This Order was issued by Presiding Judge Thomas acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: R. 36 RoP – Further exchange of written pleadings

SUMMARY OF THE FACTS:

1. The Claimant is suing the Defendants for infringement of EP 3 909 047 (hereafter: the patent in suit).
2. On 20 July 2026, the Defendants submitted their ‘Rejoinder to Reply to Statement of Defence, Reply to the Defence to the Counterclaim for Revocation and Defence to the Application to amend the patent.’
3. By brief dated 25 August 2026, the Claimant filed an ‘Application to disregard arguments according to Rule 9.2 RoP or to allow the exchange of further pleadings according to Rule 36 RoP’.
4. In support of their requests, the Claimant stated that the Defendants, for the first time, relied on a completely different die, the Z01M die, as a basis for an alleged prior use right in their Rejoinder and submitted the related Exhibit BP 12 concerning the functioning of the Z01M die, although they could and should have relied on this argument in their Statement of Defence already. Likewise, according to the Claimant, the Defendants asserted, for the first time, in their Rejoinder that the so-called ‘internal mode’ is deactivated in the normal functioning of the Y2BM die, even though they could clearly have raised this point in their Statement of Defence.
5. Against this background, the Claimant takes the view that the newly introduced arguments concerning the Z01M die and the allegedly deactivated ‘internal mode’ in the Y2BM die are belated. Alternatively, the Claimant shall be permitted to comment on the Z01M die in writing.
6. The Claimant requests:
 - I. to declare inadmissible and disregard Defendants’ new arguments in relation to the alleged prior use right arising from the Z01M die (paragraphs 207-221, 224-227), Defendants new arguments in relation to so-called ‘*internal mode*’ being deactivated in the commercially sold devices comprising the Y2BM die (paragraphs 117-121) and newly filed Exhibit BP 12; and
 - II. to order that Defendants’ new arguments in relation to the alleged prior use right arising from the Z01M die, Defendants new arguments in relation to so-called ‘*internal mode*’ being deactivated in the commercially sold devices comprising the Y2BM die and the newly filed Exhibit BP 12 shall not be relied upon by the Defendants at the oral hearing or any subsequent stages of these proceedings.

Alternatively:

- III. Claimant be given an opportunity to reply in writing to Defendants' new arguments in relation to the alleged prior use right arising from the Z01M die brought forward for the first time in the Rejoinder.

7. The Defendants request:

that both Claimant's application pursuant to R. 9.2 RoP and Claimant's alternative application pursuant to R. 36 RoP be dismissed.

8. They take the view that the new arguments regarding the 'internal mode' and the Z01M die are not filed late.
9. The Defendants justify this on the grounds that the Claimant's initial infringement mapping on the Y2BM die in the Statement of Claim was largely inconclusive and did not follow for the targeted defence. After the Defendants highlighted in their Statement of Defence that, in their view, the Claimant's mapping is insufficient and explained the actual default operation of the Y2BM die, the Claimant, in their Reply, for the first time, relied on an 'alternative path' and the alleged capacity of the Y2BM die to 'selectively operating in modes in which the complementary clock signals WCK_c and WCK_t are provided by the internal oscillator'. Therefore, according to the Defendants, for the first time in the Reply, the Claimant based its infringement allegations on an internal mode of operation, i.e., a mode in which the clock signals WCK_c and WCK_t are generated internally within the Y2BM die. The Defendants argue that this prompted them to submit in the Rejoinder that the 'internal mode' is a non-commercial and deactivated mode of operation. They therefore point out that this argument was triggered by the Claimant's clarification of the challenged operation mode of the Y2BM die by the Claimant in the Reply.
10. Alternatively, even if the Court were to find that the Defendants' arguments in their Rejoinder would have to be considered late-filed, the Defendants are of the opinion that this would not justify disregarding these arguments based on R. 9.2 RoP. The Court's discretionary power requires weighing and balancing of interests, which, in the Defendants' view, must be in their favour.
11. Furthermore, the Defendants do not consider the Z01M die defence to have been filed late. They argue that the Claimant, by relying on the non-operational "internal mode" for the first time in the Reply, also prompted the Defendants to further investigate their products and to raise a new prior use defence based on the Z01M die. In any event, the Defendants consider rejecting the submission regarding the Z01M die to be disproportionate. At the very least, the Defendants are of the opinion that the application to disregard the Z01M die defence is inequitable.
12. The Defendants object to the R. 36 RoP request. They argue that the Claimant had the opportunity to fully prepare its Statement of Claim and to present its case from the beginning. According to the Defendants, it is the Claimant's own fault that the Statement of Claim was largely inconclusive and that the Claimant was consequently forced to clarify the initial allegations, as well as to introduce new allegations, with the Reply. If the Court grants the Claimant another written submission, the Defendants point out that it must at least be

strictly limited to the support of the 'internal mode' of the Y2BM die and to the prior use defence based on the Z01M die.

13. Additionally, reference is made to the Parties' entire written submissions.

GROUND FOR THE ORDER:

15. The request to disregard Defendants' new arguments in relation to the alleged prior use right arising from the Z01M die, the so-called 'internal mode' being deactivated in the commercially sold devices comprising the Y2BM die and Exhibit BP 12 as belated is transferred to the panel and postponed until after the oral hearing at the latest. The assessment, whether these submissions and any conclusions drawn therefrom are relevant to the decision in the present case and whether they are late filed and therefore to be disregarded, requires an in-depth analysis. As far as the first instance is concerned, the assessment can only be made with certainty during or at the end of the oral hearing. The judge-rapporteur therefore exercises its discretion to postpone the decision on these issues until after the oral hearing at the latest (see: UPC_CFI_850/2024 (LD Mannheim), Order of 13 January 2026 – ZTE v Samsung; UPC_CFI_466/2025 (LD Düsseldorf), Order of 28 April 2026 – Dai Nippon v Zapp, see also UPC_CoA_299/2024, Order of 24 September 2024 – Oppo v Panasonic).
16. In view of these considerations, the second request, which seeks to prohibit the Defendants from relying on the aforementioned arguments, particularly during the oral hearing, is bound to fail from the outset. In any case, what happens after the oral hearing depends largely on whether the relevant submission is admitted or not.
17. As the Defendants submissions have not been rejected at this stage of the proceedings, the Claimant's request under R. 36 RoP, which has been filed for this case, must be decided upon.
18. According to R. 36 RoP, the judge-rapporteur may allow the exchange of further written pleadings on a reasoned request by a party lodged before the date on which the judge-rapporteur intends to close the written procedure.
19. Taking into account the principles of due process, including fairness, equity, efficiency and the right to be heard, the Claimant's request for permission to submit a further written pleading is justified. Admitting this written pleading is only a precautionary measure in case the Court does not reject the new factual submission in the Rejoinder as being submitted late.
20. It is undisputed that both the Defendants' argument that the 'internal mode' is deactivated in the commercially sold devices comprising the Y2BM die (including Exhibit BP 12) and the argument in relation to the alleged prior use right arising from the Z01M die first appeared in the Rejoinder to the infringement proceedings. Without further pleading, the Claimant has no opportunity to respond in writing to these new arguments. Unless the Panel rejects the Defendants' new arguments, this would be unfair and infringe the Claimant's right to be heard.

ORDER:

1. The decision on the rejection of the new arguments contained in the Defendants' Rejoinder in relation to the alleged prior use right arising from the Z01M die, the so-called 'internal mode' being deactivated in the commercially sold devices comprising the Y2BM die (paras. 117 – 121) and Exhibit BP 12 shall be deferred.

If necessary, the Panel will rule on this request during or following the oral hearing.

2. The Claimant is given the opportunity to respond in writing to the Defendants' new arguments regarding the alleged prior use right arising from the Z01M die, which were brought forward for the first time in their Rejoinder, **by 17 September 2026**.

Issued in Düsseldorf on 2 September 2026

NAMES AND SIGNATURES

Presiding Judge Thomas